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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,528	02/07/2006	Thomas Knoller	2003P01211WOUS	9271

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EXAMINER

TRAN, HANH VAN

ART UNIT

PAPER NUMBER

3637

MAIL DATE

DELIVERY MODE

01/26/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/567,528

**Applicant(s)**

KNOLLER, THOMAS

**Examiner**

HANH V. TRAN

**Art Unit**

3637

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-19 and 21-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-30 is/are allowed.
- 6) ☒ Claim(s) 11-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- \_\_\_\_\_ Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- \_\_\_\_\_ Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/29/2008 has been entered.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 11-13, 15, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Germany 19633975 to Becke.

Becke discloses a refrigerator storage compartment comprising all the elements recited in the above listed claims including, such as shown in Fig 2, a frame having at least two elongated arms 60 constructed contiguous and in one piece forming an intermediate space therebetween, said arms each having one end connected to a common anchoring portion 58 mounted to an inner side of a door of a refrigeration device, a refrigerated products holder 30 formed as a container.

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Becke in view of USP 4,829,653 to Stich.

Becke discloses all the elements as discussed above except for said two arms each have one free end (instead of being connected by a cross-member 58).

Stich discloses an alternate frame structure for mounting to an inner side of a door of a refrigerator comprising at least two elongated arms located at a fixed distance from one another forming an intermediate space therebetween for the purpose of supporting a refrigerated products holder 80. Therefore, it would have been obvious to modify the structure of Becke by substitute one known structural element for another would have yielded predictable results to one of ordinary skill in the art at the time of the invention for supporting a refrigerated products holder.
7. Claims 16, 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Becke in view of USP 4,735,470 to Falk.

Becke discloses all the elements as discussed above except for the container having a cover allocated to the supporting plate.

Falk discloses a refrigerator storage compartment comprising an alternate refrigerated products holder structure, such as shown in Figs 2 & 4, including a frame 54 having at least two elongated arms constructed contiguous and in one piece, a holder 41 formed as a container, said container having a cover 70, said refrigerated-goods holder formed as a supporting plate resting on said arms, said supporting plate provided on its underside with at least one projection for locating engagement into said intermediate space, a container-like cover allocated to said supporting plate, said container-like cover can be inserted as a refrigerated-goods holder in said frame, wherein the cover helps food stored therein to remain fresh. Therefore, it would have been obvious to modify the structure of Becke by providing the container with a cover allocated to the supporting plate in order to help items stored in the container to remain fresh, as taught by Falk, since both teach alternate conventional refrigerated container structure, used for the same intended of storing items in the refrigerator, thereby providing structure as claimed.

#### ***Response to Argument***

8. Applicant's arguments filed 12/29/2008 have been fully considered but they are not persuasive. In response to applicant's argument on page 7 that Becke fails to disclose the limitations in claim 11 of a common anchoring portion mounted to an inner side of a door of the refrigeration device, the examiner respectfully takes the position

that the anchoring portion 58 of Becke meets the claimed limitations of mounted to an inner side of a door of the refrigeration device.

9. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

***Allowable Subject Matter***

10. Claims 21-30 are allowed.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HANH V. TRAN whose telephone number is (571)272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HVT  
January 21, 2009

/Hanh V. Tran/  
Primary Examiner, Art Unit 3637